United Nations

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/929
30 July 1999

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 929

Case No. 1004: ZARRA
KHALIL

Against: The Commissioner-General
of the United Nations
Relief and Works Agency
for Palestine Refugees
in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Julio Barboza, Vice-President, presiding; Mr. Chittharanjan Felix Amerasinghe; Mr. Kevin Haugh;

Whereas at the request of Mohammed Zarra and Ali Saleh Khalil, former staff members of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), the President of the Tribunal, with the agreement of the Respondent, successively extended until 30 November 1997 and 28 February 1998 the time-limit for the filing of an application with the Tribunal;

Whereas, on 20 January 1998, the Applicants filed an application requesting the Tribunal to issue its order:

"i. Rescinding [the] decision [to terminate them] in the interest of the Agency.
ii. Reinstating Applicants to duty effective the date of their suspension, and considering the period of their cessation as a special leave with full pay plus due interest.
iii. [That] should Respondent refrain from reinstating Applicants, [they should be compensated] for their due salaries until a judgement has been ordered, plus a compensation for the severe injury caused to Applicants, to be paid in US dollars at the rate available to UN [staff] at the time of their separation.

iv. Payment [to the Applicants] of counseling fees and secretarial expenses estimated at US$ 1,500."

Whereas the Respondent filed his answer on 17 August 1998;

Whereas the Applicants filed written observations on 10 December 1998;

Whereas the facts in the case are as follows:

The Applicant Zarra entered the service of UNRWA on 6 October 1964, on a temporary indefinite appointment as an Area staff member in the post of Teacher "D", at the grade 6 level, at Sha'ab School, Um Al Dananir in the Syrian Arab Republic (SAR). He received successive promotions throughout his career and effective 2 January 1985, he was promoted to the grade 13 level, as Assistant Head, Education Development Unit. Effective 1 May 1990, he was transferred to the post of Field Eligibility and Registration Officer (FERO) in the Field Office, Damascus. As FERO, the Applicant Zarra was responsible for supervising and providing technical guidance and support to Eligibility and Registration staff members. His responsibilities and duties as provided in his post description included supervising and implementing the instructions, manuals and procedures governing eligibility and registration activities, making visits to the field to ensure that other staff members were functioning efficiently, and coordination with the Field Welfare Office on matters relating to Special Hardship Cases (SHC) and other duties as may be assigned. Effective 1 March 1994, following a reclassification of his post, he was promoted to grade 14. He separated from service on 12 July 1995, having been granted early voluntary retirement in lieu of termination of appointment in the interest of the Agency.

The Applicant Khalil entered the service of UNRWA on 1 April 1985, on a temporary indefinite appointment as an Area staff member in the post of Clerk "D" in the Damascus Area Office, SAR. Effective 1 March 1993, he was transferred on promotion from the post of Income Generation Officer to Assistant Field Eligibility, Registration and Distribution Officer (A/FERO) in the Field Office, Damascus. As A/FERO, the Applicant

Khalil's post description provided that he was responsible to and assisted the FERO in implementing the contents of the registration manual and instructions governing the eligibility and registration activities, dealing with amendment of family and individual particulars, making field visits to ensure that modification transactions and other registration functions are running efficiently, and other duties as may be assigned. Effective 1 March 1994, following a reclassification of his post, he was promoted to grade 11.

On 25 April 1995, following reports of irregularities in the Special Hardship Programme in Dera'a and a substantial shortage of flour after a distribution of rations in that city, the Director of UNRWA Affairs, SAR, convened a Board of Inquiry (BOI) to examine the procedures for according Special Hardship Status (SHS) to Palestine refugees in Dera'a and the procedures of UNRWA's distribution system.

On 21 May 1995, after hearing 70 hours of testimony the BOI submitted a detailed report to the Director of UNRWA Affairs. The BOI concentrated its efforts on ascertaining who was responsible for the shortage in commodities at Dera'a and if the shortage was in any way linked to procedures of according SHS to refugees. The BOI discovered that there was a link between the two matters, principally because of the disorder in procedures and the lack of internal controls leading up to granting of SHS and the notification thereof to the beneficiaries, as well the lack of supervision in this process.

The BOI noted a number of irregularities: some beneficiaries were not notified until months later that they had been granted SHS; SHC rolls contained the names of some 400 refugees whose dates of birth were in the 19th century and very early in the 20th century, implying that deceased beneficiaries were kept on the rolls so their rations could be sold off for personal gain; failure to update the distribution lists by computer which allowed for substantial theft of rations to occur; and, failure by the responsible staff (in particular, the Registration Clerk (RC) and the Area Relief and Social Services Officer (ARSSO)), to register all new SHC and distribute the proper ration cards which allowed for distribution of

rations to individuals not entitled to them. In addition, the BOI noted that close personal relationships between Field Office staff and certain staff at the South Area allowed improprieties to go unnoticed.

The BOI was of the opinion that carelessness in the allocation of basic office procedures, the non-observance of Agency rules and regulations, and a total lack of supervision of staff both from the Field Office and particularly from the Area Officer, South, created a perfect climate of confusion which allowed abuse of the distribution system. It permitted wholesale fraud through staff taking rations for personal gain and converting them to cash by selling them to merchants and apparently giving and/or selling them to other staff. Also, the BOI found the reporting lines in the Department of Relief and Social Services (especially between the ARSSO and the FERO, the Field Welfare Officer, the RC and others) very blurred.

In general, the overall picture of the South Area, as viewed by the BOI, was one of rampant and pervasive dishonesty and deviousness which reached across the entire spectrum of staff. A fair characterization of the staff would be to put them into two categories: those who participated in the dishonesty and those who were aware of it. The BOI ascertained that this was how the Agency's operations were perceived by the refugees.

After considering the BOI's report, on 31 May 1995, the Director of UNRWA Affairs informed each of the Applicants that it had come to the Agency's attention that they might be guilty of misconduct or serious misconduct, in that it appeared they were involved in a scheme that allowed for misappropriation of Agency commodities destined for SHC. The Applicants were further advised that an investigation of the charges was being undertaken, and pending the outcome of the investigation they were each suspended from duty without pay, effective close of business that day.

On 4 June 1995, each of the Applicants wrote to the Director of UNRWA Affairs and requested reversal of the decision to suspend him without pay. They also sought compensation and requested the Director of UNRWA Affairs to place a representative of the Syrian Ministry of Foreign Affairs on the BOI.

On 11 June 1995, the Director of UNRWA Affairs advised each of the Applicants that he had reviewed the circumstances of their cases, and was of the opinion that the decision to suspend each of them from duty without pay was fully justified and properly implemented in accordance with Agency procedures, and would therefore stand.

In early July 1995, the BOI issued an annex to its report of 21 May 1995, after having conducted additional interviews.

With respect to the Applicant Zarra (the FERO), the BOI noted in paragraph 9.3.9 of the annex, as follows:

> "Based upon the evidence and testimony taken in the South and Central Areas as well as the Field Office, the BOI was unable to establish that the FERO was a participant in a scheme for the misappropriation of Agency ration destined for SHC's. However, the BOI believes he was aware of or should have been aware of the fraud in the South Area for many reasons simply based upon the number of aged SHC's there. Indeed, the BOI was of the firm belief that the FERO failed to supervise his staff in a satisfactory manner, failed to exercise reasonable control over the most important Agency Projects, Registration of Refugees and the SHC Programs as it is related to his Division. Indeed, in spite of frequent travels to [the] South Area he failed miserably to detect the monumental fraud going on in Dera'a over many years, the chief instigator of which was the RC, South Area, his immediate subordinate (one of several he gave five's to on their periodic reports). He raised inefficiency to new levels by failing to distribute work properly in his Division, and failing to allow all staff except the A/FERO [i.e. Applicant Khalil] to interview Palestine Refugees who wished to complain against the Agency's faults. In addition, it appears he failed to check the work of the A/FERO and failed to implement a system which would provide for checking computer data entered by the A/FERO. In a word, he was totally inefficient in his work (and totally unqualified for the post) and worse, he put the Agency's interest below those of his colleagues, i.e. D/CFRSSP, A/FERO, and the RC, South Area."

With respect to the Applicant Khalil (the A/FERO), the BOI noted in section 9.4.9 of the annex to its report of 21 May 1995, as follows:

> "Based upon the evidence and testimony ... the BOI was unable to establish beyond a reasonable doubt that the A/FERO was a participant in a scheme allowing for the misappropriation of the Agency's rations destined for the SHCs. However, he

> did not always tell the truth to the BOI, and in certain areas tried to mislead the BOI. He too like the FERO ... failed to detect the monumental fraud going on in the South Area (and Lattakia), and failed to distribute work properly to this subordinates, prevented them from interviewing Palestine Refugees who wished to inquire about their status or complain against the Agency's faults and while his more than complacent supervisor gave him ratings of five's on his Perodic Report, his conduct demonstrated a clear inability and failure to supervise his subordinates. Not to be overlooked, moreover, is the secrecy in which he conducted his work in the Registration Division to the extent that all but his superior were excluded from knowing what was going on."

On 12 July 1995, the Officer-in-Charge (OIC), UNRWA Affairs, SAR, advised each of the Applicants of some of the findings of the BOI and the decision to terminate their appointments in the interest of the Agency, pursuant to Area staff regulation 9.1 and Area staff rule 109.1, effective close of business on 12 July 1995.

The Applicant Zarra

On 13 July 1995, the Applicant Zarra opted to take early voluntary retirement in accordance with Area staff rule 109.2(10). On 17 July 1995, he requested the OIC to reverse the decision to terminate his appointment in the interest of the Agency. On 26 July 1995, the OIC approved the Applicant Zarra's request for early voluntary retirement. He noted that it was the Administration's position that there was thereby no longer an administrative decision against which the Applicant Zarra could appeal under the Area Staff Regulations. On 5 September 1995, the Director of UNRWA Affairs reaffirmed to the Applicant Zarra that there was no administrative decision which the Applicant Zarra could appeal, but also advised that he had nevertheless reviewed the initial decision taken to terminate his services and saw no reason to change the decision, given the findings by the BOI.

On 6 September 1995, the Applicant Zarra lodged an appeal with the Joint Appeals Board (JAB). The JAB submitted its report on 19 January 1997, stating inter alia:

"**III. EVALUATION AND JUDGEMENT**

20. In its deliberations, the Board examined all documents made available to it, including the Appellant's personal file, and came out with the following:

A. By reference to the report of the Board of Inquiry dated 21 May 1995, the Board noted that,

1. The Field Eligibility and Registration Officer was interviewed by the Board of Inquiry on 9 May 1995 as well as on 25 June 1995. The Board here notes that it was not possible to find any written authorization to expand the investigation of the Board of Inquiry to the Field Office Staff after it submitted its report on 21 May 1995.

...

2. The Board also noted, that the testimony of the Eligibility Analyst, is the only testimony provided and is evidently motivated by extraneous factors.

3. Paragraph 9.3.8 [of the undated annex submitted by the BOI] states that 'additionally, one case file has been found which is full of false documentation. This may require a re-investigation of new cases registered since 1992 in the Syria Field'. The Board is of the opinion that this should not be taken against the Appellant until a definite investigation is conducted and its findings evaluated.

4. Based on the above, the Board notes that the Board of Inquiry did not establish any clear evidence to incriminate the Appellant nor did [it] establish beyond a reasonable doubt that the Appellant was actually involved.

B. By reference to the Appellant's personal file, the Board noted that the Appellant had a clean record of performance all through his service with the Agency.

IV. RECOMMENDATION

21. In view of the foregoing and without any prejudice to any party, the Board makes its recommendation that the Appellant be given the benefit of the doubt hence, the Administration's decision to terminate the Appellant's services in the interest of the Agency under Area staff regulation 9.1 be reversed."

On 19 March 1997, the Commissioner-General, after reviewing the JAB's report, transmitted to the Applicant Zarra a copy of the report and informed him, inter alia, as follows:

> "...
>
> Contrary to the Joint Appeals Board's statement, the Board of Inquiry had full authority to extend its investigation into the Field Office. The Joint Appeals Board appears to have approached this matter as if you were disciplined for involvement in the misappropriation of rations. Instead, the termination of your appointment was made primarily as a result of your short comings as a staff member in supervising and managing your department. Those shortcomings were evident from the Board of Inquiry's report. The Joint Appeals Board's only reference to this issue was to dismiss certain evidence as being motivated by extraneous matter, but it failed to identify those matter. Accordingly, I cannot accept the Joint Appeals Board's conclusions and recommendation. Your appeal is dismissed.
>
> ..."

The Applicant Khalil

On 22 July 1995, the Applicant Khalil wrote to the OIC and requested reversal of the decision to terminate his appointment. On 24 August 1995, the Director of UNRWA Affairs advised the Applicant Khalil that he had reviewed the decision to terminate his services and saw no reason to change the decision.

On 28 August 1995, the Applicant Khalil lodged an appeal with the JAB. The JAB submitted its report on 16 January 1997, stating inter alia:

> "**III. EVALUATION AND JUDGEMENT**
>
> 18. In its deliberations, the Board examined all documents made available to it, including the Appellant's personal file, and came out with the following:
>
> A. The Assistant Field Eligibility Officer was interviewed by the Board of Inquiry on 25 June 1995 after he had been suspended pending investigation. The Board here notes that it was not possible to find any written authorization to expand the investigation of the Board of Inquiry to the Field Office Staff after it submitted its report on 21 May 1995.

....

B. By reference to the Appellant's personal file, the Board noted that the overall rating of his Periodic Reports are satisfactory throughout his service with the Agency which started on 1 April 1985.

C. The Board noted that the Board of Inquiry did not conduct a detailed investigation regarding the Appellant, in order to determine beyond any reasonable doubt whether he was actually involved or not. Paragraph 9.4.9 [of the undated annex submitted by the BOI] states 'based upon the evidence and testimony addressed, the Board of Inquiry was unable to establish beyond a resonable doubt that A/FERO was a participant in a scheme allowing for misappropriation of Agency ration's destined for Special Hardship Cases'.

D. The Board noted that it is not the direct responsibility of the Appellant to detect the fraud in South Area (and in Lattakia) which is the responsibility of the operational team at Field Office and Area levels.

E. Furthermore, there was no evidence [of] the Appellant having prevented other staff members from interviewing Palestinian refugees who wished to inquire about their status ... i.e.

F. The other charges of secrecy in conducting work, failure to distribute work properly to the Appellant's subordinates, and failure to supervise them, were all based on one single testimony and were not substantiated any further.

IV. RECOMMENDATION

19. In view of the foregoing and without any prejudice to any party, the Board unanimously makes its recommendation that the Appellant be given the benefit of the doubt and hence, the Administration's decision to terminate the Appellant's services in the interest of the Agency under staff regulation 9.1 be reversed."

On 19 March 1997, the Commissioner-General, after reviewing the JAB report, transmitted to the Applicant Khalil a copy of the report and informed him, inter alia, as follows:

"...

> Contrary to the Joint Appeals Board's statement, the Board of Inquiry had full authority to extend its investigation into the Field Office. The basis of the termination of your appointment was your failure to detect a large fraud, your supervision of staff and work practices, lying to and trying to mislead the Board of Inquiry and the conflict of interest between your position and your family business. The Joint Appeals Board failed to consider the latter two reasons and did not deal in any depth with the former reasons. The Joint Appeals Board's conclusion that you should be given the benefit of the doubt, is also at odds with the onus borne by a staff member to show cause why the administrative decision should be changed or reversed. Accordingly, I reject the Joint Appeals Board's conclusions and recommendation and your appeal is dismissed.
>
> ..."

On 20 January 1998, the Applicants filed with the Tribunal the application referred to earlier.

Whereas the Applicants' principal contentions are:

1. The Applicants' suspension from duty without pay pending the outcome of the BOI's investigation purported to stain their reputation and to create an environment enabling the Respondent to dismiss them arbitrarily.

2. The decisions made by the Respondent to terminate the Applicants' services were not administrative decisions, but instead amounted to disciplinary measures.

3. The fact that the Respondent did not produce any evidence to support its suspicions against the Applicants, confirms that the Respondent either used the allegations of misappropriation as a pretext to expel the Applicants or that he yielded to outside pressure to terminate them from service.

Whereas the Respondent's principal contentions are:

1. The Respondent's decision to suspend the Applicants without pay pending the outcome of the BOI's investigation was an appropriate exercise of managerial discretion in

acordance with the applicable Staff Regulations and Rules.

2. The Respondent acted in accordance with the applicable Staff Regulations and Rules in terminating the Applicants appointments in the interest of the Agency.

3. The Respondent's decision to terminate the Applicants' appointments was not motivated by any improper motive.

4. The Applicants were or should have been aware of the fraud that was being perpetrated in administering the SHC.

The Tribunal, having deliberated from 5 to 30 July 1999, now pronounces the following judgement:

I. The Applicants Zarra and Khalil have filed a joint application. Because the Applicants' cases arise from related facts and raise similar issues, the Tribunal orders joinder of the cases.

II. At all material times the Applicant Zarra held a temporary indefinite appointment as an Area staff member in the post of Field Eligibility and Registration Officer, Syrian Arab Republic (SAR), and the Applicant Khalil held a temporary indefinite appointment as an Area staff member in the post of Assistant Field Eligibility and Registration Officer, SAR.

III. On 25 April 1995, the Director of UNRWA Affairs established a BOI to investigate possible fraud and irregularities in the SHC procedures in Dera'a. The BOI interviewed a large number of witnesses and received more than 70 hours of testimony from them. In its report dated 21 May 1995, the BOI concluded that the overall picture of the South Area in Dera'a was "one of rampant and pervasive dishonesty and deviousness which reached across the entire spectrum of staff". It concluded that a fair characterisation of the staff there would

be to put them into two categories: those who were participating in the dishonesty and those who were aware of it.

IV. The BOI found serious fault with both Applicants in relation to the performance by them of their respective duties. It expressed the opinion that the carelessness in the application of basic office procedures and non-observance of Agency Regulations and Rules by a number of personnel, including both Applicants, created a perfect climate of confusion which allowed serious abuse of the distribution system and wholesale fraud. In addition, it found inadequacies in the reporting lines and found the general administration wanting in a number of respects. It found that there was a general failure to maintain a registry for all new SHC and that in a number of cases, no proper registration card was issued. In addition, the BOI found that well-known cases of deceased beneficiaries were being carried on the SHC rolls and that their rations continued to be distributed. No official action was taken to close these cases in the Area by the responsible staff in the Registration Division of the Relief and Social Services Department.

On 31 May 1995, the Director of UNRWA Affairs informed each of the Applicants that it had come to the Agency's attention that he might be guilty of misconduct or serious misconduct in that it appeared that he was involved in a scheme that allowed for misappropriation of the Agency commodities destined for SHC. Each Applicant was further advised that an investigation of the charges was being undertaken and that pending the outcome of the investigation he was suspended from duty without pay, effective close of business that day.

V. Each of the Applicants takes exception to his suspension. The Applicants contend that the very act of suspension implied a finding by the Respondent of misconduct, and that the Respondent was not entitled to suspend them without first disclosing to them the evidence of such misconduct that he allegedly found. The Tribunal is satisfied that this is a gross misconception of the Staff Rules. Area staff rule 110.2 clearly provides for suspension of a

staff member if the Commissioner-General considers that the charge made is "prima facie" well-founded or that the staff member's continuance in office pending an investigation of the charge will prejudice the interests of the Agency. In such a case, the staff member may be suspended from duty, with or without pay, pending investigation, without prejudice to the rights of the staff member. The Respondent was clearly entitled, in the light of the initial findings of the BOI, to consider that the charges in each case were "prima facie" well-founded and to consider that each Applicant's continuance in office pending an investigation of the charge would prejudice the interest of the Agency. The Tribunal is further satisfied that the Respondent's findings in this regard were clearly reasonable and that each of the said suspensions was accordingly valid.

VI. In early July 1995, the said BOI submitted to the Director of UNRWA Affairs Annex 1 to its report of 21 May 1995. The BOI was of the opinion that the Applicant Zarra was aware or should have been aware of the fraud being perpetrated in the South Area. It further was of the opinion that he had failed to supervise his staff in a satisfactory manner and failed to run the Registration Division properly and efficiently. On 12 July 1995, the Respondent advised the Applicant Zarra of the findings of the BOI, including its finding that he was totally inefficient in his work and had put the Agency's interests below that of some of his colleagues. He indicated that he had therefore decided to terminate the Applicant Zarra's appointment in the interest of the Agency. On 13 July 1995, the Applicant Zarra opted to take early voluntary retirement in accordance with Area staff rule 109.2, paragraph 10.

On 17 July 1995, the Applicant Zarra wrote to the Respondent and requested the reversal of the decision to terminate his appointment in the interest of the Agency as well as the decision of his suspension from duty without pay. On 26 July 1995, the OIC approved the Applicant's request for early voluntary retirement. On 5 September 1995, the Director of UNRWA Affairs informed the Applicant that he saw no reason to change the initial decision to terminate the Applicant's services.

VII. On 6 September 1995, the Applicant Zarra lodged an appeal with the JAB. The JAB was of opinion that the BOI had no authority to continue its investigation into Field Office staff after it had submitted its main report. The Tribunal is satisfied that this finding resulted from a misconstruction or misunderstanding by the JAB as to the terms of reference of the BOI and/or as to the manner in which it had gone about its investigation and submitted its report. The Tribunal is satisfied that the BOI was entitled to submit the annex to its main report and that the matters reported in the said annex came within the ambit of the inquiry for which it had been established.

The JAB further noted that the BOI had not established that the Applicant Zarra was involved in a scheme to misappropriate Special Hardship rations and noted there was no clear evidence to incriminate him. Accordingly, it expressed the opinion that the Applicant Zarra be given the benefit of the doubt and recommended that the decision to terminate his appointment be reviewed.

The Respondent disagreed with the JAB's findings and pointed out that the termination of the Applicant Zarra's appointment was made not as a result of a finding of misappropriation of rations but as a results of the findings of his shortcomings in the supervision and management of his office. Although the JAB had dismissed the evidence of one witness to the BOI as being motivated by extraneous matters, the JAB failed to identify what those matters were. The Tribunal is satisfied that the Respondent was correct in his analysis and in his assessment as to what had occurred.

VIII. In relation to the Applicant Khalil, the BOI found that the Applicant Khalil had not always told the truth to the BOI and on some occasions had tried to mislead it. Further, it also found that the Applicant failed to detect the fraud in the South Area and failed to properly supervise his subordinates. On 12 July 1995, the Respondent advised the Applicant Khalil that in the light of the findings of the BOI he had decided to terminate the Applicant Khalil's appointment in the interests of the Agency. On 22 July 1995, the Applicant Khalil wrote to the OIC and requested the reversal of the decision to terminate his appointment and the

rescission of his suspension from duty without pay. On 24 August 1995, the Director of UNRWA Affairs advised the Applicant Khalil that he had reviewed the decision to terminate his services and saw no reason to change that decision.

On 28 August 1995, the Applicant Khalil lodged an appeal with the JAB. As in the case of the Applicant Zarra, the JAB expressed the opinion that the BOI had no authority to continue its investigation into the Field Office staff after it had submitted its main report, and as in that case, the Tribunal is satisfied that this finding was based on a misconception or misunderstanding by the JAB as to the terms of reference of the BOI.

The JAB noted that the BOI had not established beyond a reasonable doubt that the Applicant Khalil was a participant in the scheme to misappropriate Special Hardship rations. Further, it noted that the evidence concerning the Applicant Khalil's work practices came from the testimony of one witness. Accordingly, it opined that the Applicant Khalil be given the benefit of the doubt and recommended that the decision to terminate his appointment be reversed.

The Respondent disagreed with the JAB's finding that the BOI had no authority to extend its investigation. Again the Tribunal is satisfied that his analysis of the situation is correct. He noted that the Applicant Khalil's appointment had been terminated for four reasons, two of which the JAB had considered superficially and the other two apparently not at all. He further observed that the JAB's conclusion that the Applicant Khalil be given the benefit of the doubt was contrary to the onus borne by a staff member to show why the administrative decision should be changed or reversed. Accordingly, the Respondent maintained his earlier decision to terminate the Applicant's appointment.

IX. The Tribunal is satisfied for the reasons already stated that the Respondent's decision to suspend the Applicants was in each case made in accordance with the provisions of Area staff rule 110.2. In view of the serious allegations made against Field Office staff members in the Department of Relief and Social Services, by the BOI in its initial report and the

Applicants' responsibility for the maintenance of the rolls of SHC (which rolls for example contained names of deceased refugees), the Respondent was entitled to consider that there was "prima facie" evidence against each of the Applicants that they were involved in the scheme which allowed the misappropriation of Agency commodities. The Tribunal is satisfied that by reason of the seriousness of these allegations it was an appropriate precautionary measure to suspend the Applicants from duty without pay pending the outcome of the BOI's investigation. The Tribunal notes that it is not for the Tribunal to carry out investigations which were already carried out by the BOI. The Tribunal's function is to ensure that the BOI conducted its investigations properly and that fair procedures were afforded to the Applicants in relation thereto and that its findings, with respect to the Applicants, were properly supported by cogent evidence. Their suspension would prevent any possibility that either of them might seek to interfere with any documentary evidence that might be in the Field Office, such as SHC rolls.

X. The Applicants make general, far-flung allegations that the charges against them were fabricated and that they have been victims of a wide-ranging conspiracy. The Applicants allege that UNRWA's major programmes have been infiltrated and controlled by sinister forces and that effective control of the programmes has been taken over by malevolent and dishonest persons occupying high positions in the Governmental General Authority for Palestinian Refugees (GAPAR) for their own personal gain. The Applicants further allege that this body is linked to some unidentified and sinister "outside faction" and that nepotism in GAPAR is rife. Whilst the BOI indeed found that GAPAR had interfered with UNRWA programmes, it found no facts or circumstances arising from that interference which would have relieved either Applicant of his own responsibility to carry out his duties in an honest and proper manner.

This Tribunal must act on facts rather than on mere assertions. The assertions of a vast conspiracy are vague, unsubstantiated and in the main quite incredible. Facts cannot be found without evidence; mere assertions, no matter how often they are repeated, never

become facts. The Tribunal is satisfied that there is no evidence here that either the BOI or the Respondent have been motivated by any improper or sinister motives and, accordingly, these allegations must be dismissed.

XI. The Tribunal is satisfied that the BOI's findings that the Applicant Zarra was aware or should have been aware of the fraud regarding the SHC being perpetrated in the South Area, were fully supported by cogent evidence. The Respondent was entitled to accept and act on those findings to dismiss him in the interest of the Agency, and to reject the recommendations of the JAB. The Tribunal is further satisfied that the BOI findings that the Applicant Zarra had failed to supervise his staff in a satisfactory manner and failed to run the Registration Division properly and efficiently were likewise made on ample and cogent evidence. For example, despite his frequent travel to the South Area, the Applicant Zarra had failed to detect the fraud which the BOI concluded had been perpetrated for many years. Furthermore, the RC, who reported directly to the Applicant Zarra, was found to have manipulated the Special Hardship list by not advising the Field Officer of the deaths of refugees or by not advising refugees that they were entitled to Special Hardship rations, and to have misappropriated "surplus rations" for sale to merchants. The Applicant Zarra had consistently given the RC excellent ratings in his periodic reports. Although the evidence before the BOI did not establish that the Applicant Zarra was an active participant in the RC's scheme, the BOI concluded that by reason of his knowledge of operations in the South Area and his supervisory functions, the Applicant Zarra knew or should have known of the scheme and failed to do anything about it.

XII. The BOI also found that the Applicant Zarra had failed to properly supervise his assistant, the Applicant Khalil, who was solely responsible for the dealing with refugee complaints and for entering and modifying data in the Refugee Registration System. The Applicant Zarra does not deny that fraud occurred in the South Area. Rather, he submits that it was not his concern to know or to detect such fraud, which, in itself, demonstrates a

disturbing and irresponsible attitude. The Applicant Zarra denies that he was inefficient and further points out that if he was, then administrative rather than disciplinary action should have been taken against him. The BOI did not find that the Applicant was merely inefficient or that his performance was unsatisfactory. On the contrary, it found that the Applicant Zarra had engaged in wilful misconduct. Accordingly, whilst the Tribunal finds that the decision of the Respondent to terminate the Applicant Zarra's appointment was in the nature of a disciplinary measure rather than an administrative action appropriate for unsatisfactory performance, it is satisfied that the decision did not constitute an abuse of power.

XIII. With respect to the Applicant Khalil, the BOI found that he had failed to detect the fraud in the South Area despite his duty to "ensure that modification transactions and other registration functions [were] running efficiently". Very few modification forms had been submitted by the RC to the Field Office, even though such forms should have been regularly submitted. Apparently, the dearth of modification forms from the South Area did not prompt the Applicant Khalil to investigate or to report on the matter to the Applicant Zarra. Like the Applicant Zarra, he maintains that he was not concerned to know or to find out what was happening to rations destined for SHC in the South Area. As in the case of the Applicant Zarra, this demonstrates a totally unsatisfactory attitude to his work and responsibilities. The BOI also found that he had failed to properly distribute work to subordinates and thus prevented them from interviewing refugees who had complaints. The Tribunal is satisfied that this finding was based on cogent evidence and that the findings of the BOI adverse to the Applicant Khalil were findings of wilful misconduct or irresponsible conduct or of his wilful failure to perform his duties, rather than findings of mere inefficient or unsatisfactory performance resulting from innate inefficiency or incapacity. Accordingly, as in the case of the Applicant Zarra, the Tribunal is satisfied that the Respondent's decision to terminate the Applicant Khalil's appointment did not constitute an abuse of power.

XIV. The Tribunal is fully satisfied that the findings of the BOI in relation to each Applicant justified the decision to terminate their respective services. They each occupied a position of considerable trust and responsibility and their continued acquiescence in the misappropriation of rations destined for the most needy refugees is serious indeed. By their conduct each of the Applicants had permitted the misappropriation scheme to continue undetected for a long time. The Tribunal therefore finds that it was an appropriate exercise of discretion in each case for the Respondent to have terminated their respective services in the interests of the Agency. The Tribunal also finds that neither Applicant has discharged the onus of proving that the decision to terminate his services was either substantively or procedurally defective or vitiated by some extraneous factor such as bias or prejudice. They have failed to show evidence of any defect that impugns the administrative decisions affecting them.

XV. For the foregoing reasons, the Applicants' pleas are rejected in their entirety.

(Signatures)

Julio BARBOZA
Vice-President, presiding

Chittharanjan Felix AMERASINGHE
Member

Kevin HAUGH
Member

Geneva, 30 July 1999

Maritza STRUYVENBERG
Executive Secretary